

**Amended and Restated
Memorandum of Understanding
Between the
University of Alaska and its Board of Regents
and the
University of Alaska Foundation**

The Board of Regents of the University of Alaska and the University of Alaska ("University") and the Board of Directors of the University of Alaska Foundation ("Foundation") enter into this Memorandum of Understanding ("Memorandum") to be effective on the 10th day of November 2017. This Memorandum restates and amends the existing document, dated November 7, 2007.

WHEREAS, the University of Alaska is a constitutionally autonomous, educational corporation created under the laws of the State of Alaska responsible for oversight of the mission, leadership, and operations of the University, and

WHEREAS, the Foundation is a separately incorporated Alaskan nonprofit organization independent of the University and operating as a charitable organization under section 501(c)(3) of the Internal Revenue Code to raise and manage private funds exclusively for the benefit of the University, and

WHEREAS, in accordance with AS 14.40.400, AS 14.40.280, AS 37.10.071, Board of Regents Policy 05.14.010-020, .070, the Consolidated Endowment Fund Agreement originally dated July 1, 1997 and as amended from time to time, and the Foundation's Articles of Incorporation dated May 20, 1974, the Foundation is granted the authority to accept, hold, manage, and act as fiduciary for all monetary gifts received on behalf or for the benefit of the University, and

WHEREAS, the relationship between the University and the Foundation as to matters relating to the receipt, management, transfer, and expenditure of funds should be clear and explicit;

NOW, THEREFORE, the University and the Foundation agree:

1. Foundation use of University of Alaska Name, Seal, and Logotype

Consistent with its mission to advance the strategic plans and priorities of the University, the Foundation uses the name University of Alaska Foundation. The Foundation is also granted a nonexclusive license and authority to use the name, logos, and service marks of the University of Alaska and its major administrative units and campuses in the conduct of the Foundation's work on behalf or for the benefit of the University.

2. The University's Relationship to the Foundation

- a. The Foundation's President shall be the Chief Development Officer of the University and report directly to the President of the University.

- b. The University President, chancellors of the three major administrative units, and two members of the Board of Regents appointed by the Chair of the Board of Regents shall serve as voting members of the Foundation's Board of Directors.
- c. All monetary gifts and the established value for real property and tangible personal property received by the University shall be reported promptly to the Foundation for receipt processing and recording.
- d. The University President is responsible for communicating to the Foundation the University's strategic plans and priorities as approved by the Board of Regents.

3. Foundation Duties and Authority

- a. The Foundation's duty, as incorporated in its mission, is to advance the strategic plans and priorities of the University.
- b. The Foundation is responsible for the performance and oversight of all aspects of its operations based on a comprehensive set of bylaws, consistent with this agreement, which clearly addresses the Board of Directors' fiduciary responsibilities, including expectations of individual board members based upon ethical guidelines and policies.
- c. Unless expressly prohibited by the donor or the Regents, all gifts made to or for the benefit of the University will be accepted, held, and managed by the Foundation, except for 1) tangible personal property to be used directly for University programs or 2) real property. The net proceeds from the sales and leasing of a donated real property will be transferred to the Foundation upon receipt of such funds by the University.
- d. The Foundation shall properly receipt and record all gifts received by the Foundation or the University in accordance with state and federal tax law.
- e. The Foundation shall be responsible for investment and administration of endowment funds in accordance with the most recent Consolidated Endowment Fund Agreement except as provided in subsection 3.f below.
- f. Operating funds and endowments for which the Director of Finance determines that separate investment is in the financial best interest of the fund shall be invested in accordance with policies adopted by the Board of Directors.

4. Cooperation and Alignment

- a. The Foundation and the University will use their best efforts to establish and encourage a close and collaborative working relationship to further common investment and financial interests.
- b. The Foundation and the University shall coordinate the fundraising and donor acquisition programs that support the University's strategic plans and priorities. These programs include but are not limited to, annual giving, major gifts, planned gifts, special projects, and capital fund drives.

- c. All gifts accepted will be consistent with advancing the mission of the University, and the strategic plans and priorities established by the University.
- d. The Foundation and the University shall establish practices and procedures for development, donation acceptance, gift receipting, endowment administration, investment, disbursement, and cross-charging for services that adhere to the terms and conditions of this Memorandum, the Consolidated Endowment Fund Agreement, and applicable federal and state laws.
- e. The auditors of the Foundation will be selected with the participation of at least one member of the Foundation's Finance and Audit Committee.

5. Foundation Funds and Costs

- a. The Foundation shall be responsible for establishing a financial plan to underwrite the cost of the Foundation's programs and operations.
- b. In consideration for coordination and other services provided by the Foundation, including, but not limited to, gift receipt, record maintenance, investment and disbursement of University funds managed by the Foundation, and oversight of University development activities, the University will provide the Foundation with fair and reasonable compensation for such services. The compensation shall include indirect in-kind support such as office space, human resource services, risk management services, technology services, and in-kind legal services when such legal services will not result in a conflict of interest for counsel. The amount of compensation will be determined annually no later than April 1 preceding the start of the fiscal year when compensation is due.
- c. The Foundation will maintain sound management practices and effective internal controls and will engage an independent accounting firm or firms, which may be the same firm(s) used by the University, to conduct an annual audit of the Foundation's financial records and periodically review its internal control systems.
- d. The Foundation will provide the University President and Chief Financial Officer a copy of the annual audited financial statements, including all management letters, reports, and official communications from the auditors and regulatory agencies.
- e. The University may at its discretion engage its own internal or external auditors to audit the records, accounts, and activities of the Foundation. The costs associated with such engagements shall be paid solely by the University.

6. Foundation Records and Confidentiality

- a. Records. The Foundation shall maintain copies of the plans, budgets, and donor and financial records developed in connection with the performance of its obligations and will provide access to such information to the University when the Foundation believes it is warranted and as may be required by law.

b. Confidentiality.

- i. The Foundation is a private corporation with the obligation and duty to keep all records and data confidential. The computer system (hardware, software, and data) used by the Foundation to operate, conduct its business and accomplish the purposes for which it was established is owned by the Foundation.
- ii. The Foundation may contract with the University to provide certain support services in connection with its recordkeeping and computer maintenance, but the Foundation shall have exclusive and sole responsibility for access to and use of the information maintained or contained on its systems except as may be provided elsewhere in this Memorandum of Understanding.
- iii. (a) The Foundation shall establish and enforce policies to protect donors' privacy and the separate rights of the Foundation and the University to protect the confidentiality of information regarding donors and potential donors. The Foundation may, in its sole discretion, allow access to information by University staff for Foundation or development needs as it deems appropriate. Any disputes regarding access to Foundation data or records shall be resolved by the Foundation President or designee, in conjunction with the University President, or designee; (b) Confidentiality in terms of non-disclosure to persons who are not employees, Directors, or agents of the University, the Foundation, or a successor Director shall be maintained in accordance with the terms of this Memorandum of Understanding. Donor records and development records contain information that could affect the value of investments or impair the ability to acquire, maintain, or dispose of investments and therefore must be kept confidential and exempt from public disclosure to the maximum extent allowed by law.

7. Human Resources

- a. In order to provide consistent and coordinated leadership to the combined development efforts of the University and the Foundation, the parties to this Memorandum intend that the Foundation's President also serve as the University's Chief Development Officer.
- b. The coordinated annual work plans and performance expectations for the joint position shall be approved jointly by the University President, and the Executive Committee of the Board of Directors. Performance evaluations and compensation decisions shall be conducted jointly by the University President and the Board of Directors Chair in accordance with University processes and procedures.
- c. The Foundation's President will manage the selection and supervision of staff that provides services to the Foundation.
- d. University employees, including the Foundation's President, assigned to provide services to the Foundation shall be subject to Regents' Policy, University Regulation, and all other practices and procedures applicable to University employment as they may be amended from time to time. No compensation for services will be provided directly to University employees by the Foundation.

8. Term of this Memorandum of Understanding

- a. This Memorandum shall be effective November 10, 2017.
- b. Either party may terminate this Memorandum without cause upon 120 days' written notice to the other party.
- c. This Memorandum shall terminate if the Foundation ceases to exist for any reason or ceases to be an Internal Revenue Code §501(c)(3) organization. In the event the Foundation defaults in the performance of its obligations and fails to cure such default within a reasonable time after receiving written notice, the Board of Regents may, by affirmative vote, terminate this Memorandum. Notice to the Foundation must be given to the Board of Directors chair and the Foundation's president. Notice is effective when received.
- d. Upon termination of this Memorandum (1) the University will assume all debts and obligations incurred by the Foundation on behalf of the University including, but not limited to, lease obligations, loans, advances, and other debts and (2) at the Regents' request, the Foundation shall transfer all of its assets and property to the University or a successor trustee named by the University Board of Regents.

9. Indemnification

To the maximum extent permitted by applicable law, each party to this Memorandum shall defend, indemnify, and hold harmless the other from and against any and all loss, expense, damage, claim, demand, judgment, fine, charge, lien, liability, action, cause of action, or proceedings of any kind whatsoever arising out of negligence in the performance or activities of the party, its directors, officers, employees, and agents, except for the portion of any damage, loss, or injury resulting from the party's own negligence or intentional injury.

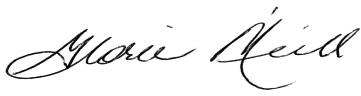
10. Miscellaneous Provisions

- a. Amendment. This Memorandum may be amended at any time. Any amendment must be approved by the Board of Regents and the Board of Directors.
- b. Governing Law and Venue. This Memorandum has been adopted and shall be governed and construed in accordance with the laws of the State of Alaska. Any disagreements or lawsuits arising out of this Memorandum, after mandatory mediation, shall be brought in the Superior Court for the State of Alaska, Third Judicial District, in Anchorage, Alaska.
- c. Severability. If any part, term, or provision of this Memorandum is determined by a court or agency of competent jurisdiction to be unlawful or in conflict with the laws of the United States or the State of Alaska, the validity of the remaining portion or provisions of the Memorandum shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Memorandum did not contain the particular part, terms, or provision held to be invalid.

- d. No Assignment. This Memorandum is entered into based on consideration of the nature and responsibilities of the parties and their unique relationship to each other. No party shall assign all or any part of its interest in this Memorandum and any attempt at such assignment shall be void and may, at the sole discretion of the other party, terminate this Memorandum. Notwithstanding the above, the Foundation may delegate to one or more investment managers a portion of its powers, duties, and responsibilities with respect to investments, as appropriate, according to the provisions of this Memorandum and AS 37.10.071.

IN WITNESS WHEREOF, the parties have approved this Memorandum of Understanding by affirmative vote of their respective boards at duly authorized meetings and cause this Memorandum to be executed by their duly authorized officers as of the day and date first above written.

University of Alaska

By: 
Gloria O'Neill, Board of Regents Chair

12/13/2017
Date

By: 
Jim Johnson, University President

12.7.2017
Date

University of Alaska Foundation, Inc.

By: 
Scott Jepsen, Board of Directors Chair

12/7/17
Date

By: 
Susan Foley, Foundation President

12/7/17
Date